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# Qualification of Eastern Producers

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Director of Distribution  
War Food Administration  
Washington, D. C.



*Report of the Director of Distribution  
to the War Food Administrator Rela-  
tive to the Qualification of the Eastern  
Milk Producers Cooperative Associa-  
tion, Inc., to Receive Payments under  
the New York Order (Order No. 27)*

July 1945

Market Administrator  
New York Metropolitan Milk Marketing Area  
205 East 42nd Street  
New York 17, New York



## Procedure

On December 5, 1941, the market administrator, acting pursuant to the authority vested in him by Section 927.7 (e) — now Section 927.7 (d) — of Order No. 27 suspended the payments with respect to milk which it caused to be delivered from its members on and after December 5, 1941, which would have been due to the Eastern Milk Producers Cooperative Association, Inc., on January 25, 1942, and the payment which would be due on the 25th day of each month thereafter. Pursuant to the provisions of the above-cited section of the order these payments have been segregated and are being held in reserve by the market administrator. Due notice was given to the cooperative and to the Secretary of Agriculture.

As the basis for this suspension the market administrator cited the complaint issued by the Federal Trade Commission dated November 26, 1941 (Docket No. 4647) in the matter of the Sheffield Farms Company, Inc. The complaint contained several allegations with reference to the domination of the Eastern Milk Producers Cooperative Association, Inc., by the respondent company. The issuance of this complaint was considered by the market administrator as sufficient to create in his own mind a reason to believe that the Association might not be qualified under the standard set forth in Order No. 27.

Under ordinary circumstances a hearing would have been called after such further investigation as the Department deemed necessary. The hearing required by the order before an association may be disqualified from receiving payments is conducted as a fact finding or investigational hearing and not as an adversary proceeding. In such proceedings, however, the association whose qualification is in question is informed of the facts which indicate the possible lack of qualification and in the process of responding to factual examination in such a hearing is given the opportunity to submit any other relevant facts which it believes will demonstrate its continued right to receive payments.

At the time the complaint was issued by the Federal Trade Commission and payments were suspended by the market administrator, the Secretary was familiar with the fact that the issuance of the complaint had been preceded by several months of careful investigation by the Federal Trade Commission. It was also expected that in due course hearings would be held as authorized by statute and by regulations issued by the Federal Trade Commission. Because of the broad issues involved in the problem before the Secretary, it was realized that relevant information was no doubt in possession of the respondent company and its representatives whose status in connection with a hearing under Order No. 27 would have been entirely different than the status of the company as respondent in the proceedings before the Federal Trade Commission. Likewise, the recognized powers of investigation and inquiry vested in the Federal Trade Commission gave promise of access to useful information in dealing with the problem under Order No. 27.

In view of these considerations and the duplication of effort under contrasting administrative procedures which would have been in-



volved, the Eastern Milk Producers Cooperative Association, Inc., was advised of the preference of the Department to withhold action until developments in response to the complaint could be observed. Later, it was stated more specifically that action be deferred until the Federal Trade Commission had completed its case. In these suggestions the association had generally acquiesced.

The case for the Federal Trade Commission has now been concluded. The record contains all of the facts in evidence adduced in the effort to prove the allegations of the complaint. Such further evidence that will be developed in hearings called at the request of the respondent will obviously not be designed to strengthen the case for the Federal Trade Commission nor to represent any further facts that would tend to show domination of the association or lack of control by producers. In the case before the Federal Trade Commission the Eastern Milk Producers Cooperative Association, Inc., is not the respondent. It has not been permitted to intervene on a basis that would give it the right to cross-examine witnesses whose testimony is produced in order to prove those allegations of the complaint relative to the domination of the association by the Sheffield Farms Company. Before the Secretary could act to disqualify the Eastern Milk Producers Cooperative Association, Inc., it would be entitled to a hearing of the kind above described.

The War Food Administrator, who is now authorized to make these determinations, may now utilize all information in his possession inclusive of that developed in the course of the hearings before the Federal Trade Commission as adequate preliminary investigation to determine whether or not a hearing under Order No. 27 should be held or the matter dismissed and sums now held in reserve should be restored to the association.

## Order standards

The first paragraph of Section 927.7 (d) of Order No. 27 contains the specific standards which must be applied in determining whether or not the Eastern Milk Producers Cooperative Association, Inc., should be disqualified from receiving payments, and is as follows:

**“(d) *Cooperative payments*** Any cooperative association of producers may apply to the Secretary for a determination of its qualifications to receive payments pursuant to this paragraph by reason of its having and exercising full authority in the sale of milk of its members; arranging for and supplying, in a manner commensurate with the marketing capacity of the several types of cooperative associations designated in this paragraph, in times of short supply, Class I milk to the marketing area; securing utilization of milk, in times of long supply, in a manner to assure the greatest possible returns to all producers; having its entire activities under the control of its members; and complying with all provisions of this order applicable to it.”



While each of the several conditions contained in this paragraph appear to be involved, it is obvious that primary attention was focused on the condition of "having its entire activities under control of its members."

## **History, organization, and operation**

A considerable portion of the accumulated evidence relates to the historical origin of the Eastern Milk Producers Cooperative Association, Inc., and to certain features of its organization and method of handling its internal operations. Other facts pertain to the exercise of influence and the application of pressures by company representatives on individuals and official groups representing the association with the apparent intent of controlling various phases of its internal operations, such as elections, and also the formation of policy or the shaping of operating programs of the association. Another portion of the information relates more particularly to the terms and conditions on which milk was purchased by the company, which were the subject of periodical negotiations between the company and the association. Some information relates to the manner of distribution of proceeds among the members. All of the assembled facts, however, are more or less interrelated, but the suggested grouping is helpful in making an appraisal.

The Eastern Milk Producers Cooperative Association Inc., known before 1939 as the Sheffield Producers Cooperative Association, Inc., was organized in 1922 as an unincorporated association. It was incorporated under the same name in 1927 as a nonstock cooperative association and so remains under the present corporate name. Until 1937, the association had no corporate capacity to sell milk to any purchaser other than to the Sheffield Farms Company. Modification in the charter, by-laws, and contract to remove this limitation followed over a period of time. The precise date at which all adjustments were completed has not been determined but there seems to be no question but what it was complete by 1939.

Prior to 1934, acquisition of membership did not involve any express act of the producer other than application to deliver milk to a plant operated by the Sheffield Farms Company and his approval and acceptance as a patron. The record is confusing as to whether or not membership certificates were issued. It appears that such certificates or metal plates were distributed to some members, and it is uncertain as to whether regular deductions were taken from producers' checks in this early period.

Member contracts were adopted in 1934 in form as they exist today. This contract is similar in character to those used by many other bargaining associations and is subject to cancellation upon a 30-day written notice by either party to the other. Before the basic instruments of organization were modified to permit sales to other handlers, the withdrawal of a producer from a plant or the closing down of a plant or the shifting of its operation from the company to another handler necessitated the termination of membership. After 1937, the policy has generally been followed to serve notice of cancellation to



producers wherever these same conditions exist. In cases of individual withdrawals in which the association failed to give notice of cancellation, the association has not continued to receive check-offs nor has it undertaken to represent such producers in a bargaining capacity. Some of its members deliver to a subsidiary of the Sheffield Farms Company, but the present membership is almost wholly confined to producers which ship either to the Sheffield Farms Company or to a subsidiary thereof.

From the time member contracts were adopted until 1940 or 1941, the process of obtaining signatures was closely associated with plant management. In the beginning these contracts were available principally at plant offices and were collected, when signed, by plant managers for transmittal to the director representing the district or to the secretary of the association. Signing up new members was also closely associated with the process of a producer applying for admission to a plant and having his farm inspected by a company representative for approval as a fluid milk shipper. After the date mentioned above, the Eastern Milk Producers Cooperative Association, Inc., employed "contract officers" whose duty it was to contact producers when they began shipping to Sheffield plants. A shipper to such a plant is not obligated to become a member, and there is no evidence of an agreement on the part of the company that it will not take milk from a producer unless he signs a member contract. Solicitation, however, is generally confined to such shippers.

The company has followed the practice of advising the secretary of the Eastern Milk Producers Cooperative Association, Inc., of the names of all producers which have discontinued deliveries to Sheffield plants.

In 1937 when the Sheffield Farms Company shifted the operation of 16 or 18 plants in Northern New York to a subsidiary company, membership in the association by producers delivering to those plants was simultaneously terminated. In 1939, the plant at Cobleskill, New York, was sold and notification was given to producers delivering to that plant, in accordance with the member contracts, to terminate membership at the same time operation of the plant by the company ceased.

Until an independent office was established in Syracuse in 1939, meetings of the board of directors were generally held in New York City on premises of the Sheffield Farms Company. Since that time meetings with company representatives and the board have continued periodically, but Syracuse has generally become the headquarters for periodic meetings of the board.

The Eastern Milk Producers Cooperative Association, Inc., has never undertaken to audit the utilization of milk by the Sheffield Farms Company even though milk was presumably sold by contract on a classified basis. Since the introduction of the Federal order on September 1, 1938, with the exception of 5 months in 1939 when the order was suspended, the utilization of milk by the company has been audited by the market administrator. The Eastern Milk Producers Cooperative Association, Inc., has never developed a systematic



program of checking weights and tests of milk delivered by its members to plants operated by the company. Company employees, known as barn inspectors, were responsible for inspecting the barns of each patron producer in addition to such inspection as may be made by public authorities. The function of barn inspection, however, is usually performed by whatever person, company, or cooperative operates a milk plant. The Eastern Milk Producers Cooperative Association Inc., has never operated any plant.

Payments for milk are made to each producer, member of the Eastern Milk Producers Cooperative Association, Inc., by the Sheffield Farms Company or its subsidiary. The association has never assumed the responsibility of collecting the proceeds from the sale of all milk subject to the contract between the association and the company nor has it ever assumed the responsibility for distribution of such proceeds among its membership. An arrangement designed to accomplish this purpose was developed with the company in 1939, but upon refusal of the Government to recognize the arrangement as sufficient to qualify the Eastern Milk Producers Cooperative Association, Inc., for payments at the rate authorized by Order No. 27 for so-called "collecting and reporting associations," that matter was dropped and the bill for the first month's services rendered to the association by the company was never paid. The collection and distribution of proceeds among members is a function which only a few of the so-called bargaining cooperatives in the larger fluid milk markets perform as regular business function. The majority of bargaining associations in the New York metropolitan market do not perform this function.

Representatives of the Eastern Milk Producers Cooperative Association, Inc., (then the Sheffield Producers Cooperative Association) participated in the organization of the Metropolitan Milk Producers Bargaining Agency in 1937, authorized under New York State law. It was one of the original members and one of two organizations for which the by-laws of that organization made special provisions with reference to representation of its board of directors. At the peak of its membership this agency represented a large majority of the associations in the New York milkshed, including the Dairymen's League, which was the largest cooperative association in the entire area. Membership in that agency was limited to associations which were "controlled by milk producers" and whose marketing operations in the metropolitan market were based upon contracts with producers. During the period of its membership in the Agency, the secretary of the Eastern Milk Producers Cooperative Association, Inc., served as its president for three years and as its treasurer for one year. Another officer served as secretary of the Agency for one year. In 1938 the former counsel for the New York State Milk Control authorities served as its (i.e., E.M.P.C.A., Inc.) counsel. In 1939 it secured and still retains the services of counsel who had, prior to that time, served in the same capacity for the Agency. The Eastern Milk Producers Cooperative Association, Inc., withdrew from the Agency in February 1942, and in that connection there was no reported official action by



the Agency raising any question as to its lack of eligibility under the above-mentioned requirement.

In this connection it is to be noted that most of the bargaining associations in the New York milkshed, with the exception of the Eastern Milk Producers Cooperative Association, Inc., were organized or encouraged to revive organized activity by the Metropolitan Milk Producers Bargaining Agency. Several score of such associations were organized in the period 1937-1939. The producers delivering to a single plant usually formed the basis for each incorporated association. Sometimes the membership included only a bare majority of such producers. As such, each association had but a single handler outlet. The resulting limitation of members to producers supplying a single handler was a result of policy pursued by each association, as is now the case with the Eastern Milk Producers Cooperative Association, Inc., and not a legal limitation embodied in their respective charters or by-laws. Other producer groups having a similar economic interest because of shipment to the same handler or by virtue of being on the New York market were not associated with each other except through their affiliation with the Bargaining Agency. Any movement toward further unification to encompass a number of handler outlets or to consolidate their economic resources has been almost negligible.

Systematic contribution by members to the support of these associations to supplement the limited financial reimbursement from the producer-settlement fund has been undertaken by only a few of these groups. In only a few instances have their operating programs expanded under their own leadership to include responsibility for reporting and payment of producers on a sufficiently sound basis for qualification to receive the next higher rate of payment authorized by the order. In equally few cases have these associations systematically checked the weights and tests of milk delivered by their members or developed other associated member services that have long been a basic part of the functions performed by the stronger bargaining associations in other markets.

Physical control of the movement of milk after delivery to a plant and direct control of its disposition has been outside the orbit of such associations as contrasted with the so-called operating associations in the New York market. Exceptions to this, however, are found in some non-operating associations in other markets.

### **Company influences and pressures**

There is undeniable evidence in the record of the Federal Trade Commission hearings that the Sheffield Farms Company had, over a considerable period of time, sought to influence what and how various things were done by the Eastern Milk Producers Cooperative Association, Inc. Company representatives who had indulged in such practices included its highest officials, some of its plant managers, some of its barn inspectors, and others who contacted producers and officials of the association. One notable occasion occurred in 1935 when a proposal was offered by the company to the board called in



special session at New York City that the association take over the operation of the company plants located in Pennsylvania and sell the milk there received to the company. Two meetings were called. Vague statements of uncertain market conditions that might follow if a proposal were not accepted were made by company officials. The reasons which appeared to prompt this move by the company are interesting but add little to the established fact of what was done. Twice the board declined to accept. In this effort the company was unsuccessful.

Possibility of degrading certain plants from Grade A to Grade B or of closing others were discussed at various times by company officials in connection with the election of some delegates chosen from locals to vote for directors or in connection with the actual directors' election. That there may have been other reasons why the company should consider such possibility is altogether probable, but irrespective of that fact, the action, timing, and local emphasis of such tactics can leave no doubt as to the desire on the part of the company to influence some of the elections.

Prior to the issuance of the Federal order for the New York market the same technique was employed to shape sentiment and to obtain support from individuals for the company's position with reference to that order. Specifically, such tactics appeared to be employed in the election of a director from the Cobleskill, New York, area in 1939. Similar tactics, although with respect to different issues, were indulged in in District No. 5 in Vermont in 1936 and in the election of a director from the Malone, New York, area in the same year. In some instances, expression by a company representative of interest in a certain candidate, as a best man for delegate or for director, was not accompanied by any obvious threat. In one or more instances, the candidates which company representatives were known to favor were elected. In another, the candidate supported by company representatives was not elected.

On another occasion, company officials vigorously protested the action of the secretary of the association in publishing a report made by the attorney general of New York relative to the milk industry in the association paper.

Some evidence seems to point to company dictation in the admission of producers to membership and in the termination of membership. It is believed, however, that with respect to the rank and file of members, such results were incidental, either to the lack of authority in the organization to sell to any other handler or to administrative policy followed after such corporate limitations were removed.

Numerous exhibits consisting chiefly of correspondence between the secretary of the association and officials of the Sheffield Farms Company or their attorneys indicate that during the term of the first secretary of the organization, which terminated in 1936, there was a constant stream of correspondence through which the company was kept advised on association matters; official personnel of the association was carefully watched as to their attitude on company policies;



advice of company officials was sought on major issues of association policy; and instructions, suggestions, and directions were given constantly by company officials or their representatives.

These suggestions and instructions took the form of prepared letters to legislative officials, both Federal and State, statements to be presented at conferences or hearings before public officials, editorials, or articles to be published in the association paper, advice as to what strategy should be followed on various occasions, and other similar means. All such suggestions may not have been followed or adopted by the association during this period, but there is abundant evidence that much of it was utilized and that the secretary appeared to be a willing channel through which the company spoke its views and exercised its influence on matters of primary producer concern. When the company seemed to recognize that some problems were of primary company concern, ways were usually found to plead its case through association channels, supervised by this official.

In these communications certain association officials were frequently mentioned by name and characterized as either "safe," "one who can be counted on," "dangerous," or "irreconcilable," and suggestions were frequently included as to what should be done. The term of the individual who served as first secretary terminated in 1936. He was succeeded by an individual who had been characterized previously in such correspondence as "dangerous" to company interest. By re-election to this office by the Board of Directors, he continued to serve as secretary until 1939.

Much information relates to the so-called bargaining or negotiating activities of the board with company representatives. Testimony of several witnesses characterized the price negotiations in meetings which they attended as perfunctory and more or less of a farce. Meetings so described occurred over a period of several years. Some of these witnesses, however, attended such meetings only rarely and apparently were not among those assuming the principal responsibility of discussing the matter of prices on the behalf of the association. Dissatisfaction was expressed with the methods and results of price negotiations relative to premiums for "Sealect" milk. In the period following the elimination of Grade A premiums from the order, a committee consisting of directors from districts in which former Grade A plants were located, was created to negotiate with the company for continued premiums for special grade milk. The committee was never able to obtain premiums in the amount requested or which they thought warranted but such premiums were paid and upward adjustments were negotiated from time to time.

Much of the testimony dealt with the market situation in 1937, the strike which grew out of it, and the action of the Sheffield Farms Company in transferring the operation of 16 or 18 plants in Northern New York to a subsidiary corporation. As noted above, this action had the effect of eliminating these producers from the fluid milk market in New York City with consequent reduction in their price

*to manufacturing levels. The action by the association, in view of the sharp reduction in producer prices which resulted, has apparently*



been considered as having a direct bearing on the question as to whether or not the association is controlled by producers.

Contracts of purchase and sale between the company and the association covering a period of years, although negotiated from month to month, provided for prices in accordance with its use as set forth in the contract. During the period when minimum prices were fixed by the Federal order, these contracts have been in conformity with that regulation with respect to the milk affected by it.

The foregoing summary is not an exhaustive or detailed study, but is believed to indicate the substance of the information in connection with which the question of qualification of the Eastern Milk Producers Cooperative Association, Inc., to receive payments has been raised.

### **Pricing under Order No. 27**

Since September 1, 1938, with the exception of the period from February 1 through June 30, 1939, when the order was suspended, the minimum prices which the Sheffield Farms Company paid for most of the milk received from members of the Eastern Milk Producers Cooperative Association, Inc., was fixed by Order No. 27. Until March 1, 1941, milk sold in outside areas was not priced and some of the milk received by the Sheffield Farms Company or its subsidiaries from members of the Eastern Milk Producers Cooperative Association, Inc., was in this category. Also, after July 1, 1941, premiums for Grade A milk were no longer contained in the order due to the elimination of Grade A milk by the metropolitan health authorities. After its elimination, however, the Sheffield Farms Company continued to sell a special quality milk known as "Sealect" milk it secured generally from sources that had previously supplied Grade A milk.

### **Appraisal and conclusions**

In an organization of the size, scope and character of the Eastern Milk Producers Cooperative Association, Inc., the successful control of elections in scattered locals or districts through threats or coercion by the company would not necessarily prove that the association as a whole was so controlled. Under some circumstances a pivotal directors' election, or even a preliminary series of delegate elections, might tip the decisions of the entire board in the direction desired by outside interests, but it is obvious that the final decisions and policies supported by the board or by the delegate body are to be considered along with attempted or successful interference in local elections.

The democratic character and election machinery of cooperative associations offer ample opportunity for a variety of persuasive methods to be directed to individuals by any party or company who chooses to interest itself in association affairs. No legislative restraint has thus far been adopted to protect producers from such acts of interference and coercion, either in the organization or in the operation of associations of their own choosing. Struggle against such forces has characterized practically every step forward in the cooperative



movement. Associations of the bargaining type are especially vulnerable since their strength lies largely in the development and the maintenance of supporting opinion among their membership without the added ties which may be associated with physical control of milk and individual property interests in other types of associations.

While most of the evidence pertained to the period prior to the issuance of Order No. 27 and none with respect to the period since payments were suspended, incidents, operations, and policies occurring or initiated in a previous period are not without significance if there is reason to believe that they characterize the association at the present time.

It seems clear that in 1922, the spearhead of producer effort to mobilize producers into effective marketing organizations existed outside the group supplying the Sheffield Farms Company. The support of these producers was solicited along with all others. As a counter move, and perhaps for other reasons also, it appears that the company took the initiative in forming or of encouraging the formation of a loose organization among its own producers. Sufficient support was found to establish a nucleus of producer representation in each locality who formed a liaison between a rather acquiescent producer group and company representatives.

During the period from 1922 to 1934, which included all of its unincorporated history and the early part of its incorporated history, membership was apparently an incidental result of delivery of milk to a Sheffield plant. It is not surprising that the rank and file of members apparently did not look upon the organization as one of their own creation to accomplish their own predetermined objectives by means of their own choosing.

The introduction of a membership contract in 1934 altered both the nature of the producer's response and the nature of his obligations to the association. This move also may have had its inception in company policies, but whatever its origin, the effect was to establish a basis of bargaining authority in the duly constituted officers of the association that may well be regarded as essential in marketing associations which do not operate plants or assume responsibility for the physical care and marketing of milk.

The form of member contract adopted in 1934 and still used by the association is similar to those used by many other associations of the bargaining type. In and of itself this membership contract is not considered inimical to producers' interests, nor does its use as a basis of membership constitute evidence of outside control. As an adjunct to limited corporate capacity to contract for the sale of milk, however, it can serve that purpose and we think it did serve such a purpose until the corporate limitation was removed in 1937. The method by which signatures were first secured to such contracts, and which was followed for several years thereafter, did little to disassociate the company, its inspections, its barn approvals and other phases of company activity from the organization as a producers' association. The whole field of member relations, inclusive of the acquisition and termination of membership, also was closely allied with company activity.



The record fails to disclose, however, that reliance on plant managers to distribute blank member contract forms and to collect and transmit those which were signed to appropriate association officers or that the absence of an aggressive program to maintain close member relations by and through association personnel was due primarily to restraints imposed on association officers by the Sheffield Farms Company. It is more reasonable to believe that association officials failed to put forth any serious effort at that time to take over exclusive responsibility. However, since the membership of the association was legally tied up with company patronage, the practice would appear to be an evidence of a basic infirmity in the association rather than its cause. A similar situation seemed to exist in regard to the manner in which some of the association records were kept and certain other internal affairs were handled.

Notwithstanding this general situation, the official representatives of the association withstood considerable pressure from the Sheffield Farms Company to take over the operation in 1935 of plants operated by the company in Pennsylvania. They did not allow the association on that occasion to be used as an instrument to carry out an operating policy desired by the company.

The underlying fact or condition, which appeared to affect the operations of this association during the period prior to the introduction of the Federal order in the New York market (September 1, 1938) in such a way that it could not have been qualified to receive payments under the standards now contained in the order, was the limitation contained in its corporate set-up, its by-laws and contracts executed thereunder by virtue of which the association could not market milk to a purchaser other than the Sheffield Farms Company. The type of collaboration between company officials and the first secretary of the association was made possible by the method of organizing the association in 1922 and its reorganization in 1927, and the effectiveness of such collaboration as a means of internal control was due largely to the corporate limitations.

A producer who did not ship to that company was not eligible to become or to remain a member. In the presence of this organic limitation, if the company could not persuade key individuals to do its bidding, it could eventually eliminate them or the group upon which they rely for support by declining to accept their milk. The threat of such elimination, which was apparently used in a variety of ways, was too powerful a weapon to be successfully challenged on major issues over an extended period of time. All other efforts that might have been put forth to solidify member relations could be dissolved almost instantaneously in this manner by company action.

The transfer of 16 or 18 plants in Northern New York from the Sheffield Farms Company to one of its subsidiaries in 1937 dramatized this infirmity in the organization. Producers delivering to those plants were removed from membership in the association and their representatives were removed from their official positions by company action, not by action of the association. Even the remaining officers of the association had no legal authority to continue to represent



their interests as association officials. The association was not free to determine its own membership and to represent producers because they were qualified to ship milk to the metropolitan market in which the association was operating. In substance, the association was merely an organization of committees and officers representing only such producers as the company chose to accept as patrons. Its scope was definitely subordinate to company operations. It was an adjunct to the producer relations program of the company, and, while such an arrangement may not have been without benefit to patrons as well as to the company, its operations as an organization could not have been considered as being under the full control of producers.

The organic limitations mentioned above could have and should have been eliminated by producers themselves. It is not uncommon for an association to represent producers of different grades of milk, or those supplying different markets, with prices varying as between grades or between those serving different market outlets. In a strictly bargaining association, the marketing of milk to two or more purchasers is primarily the result of a membership policy rather than of the physical direction of milk as is the normal marketing practice of an operating association. By acquiring a member, a bargaining association assumes the responsibility of representing him in dealings with the buyer to whom the member, as an individual, has decided to deliver his milk. There may remain a strong bond of established business relationship between the purchasing handler and the producer.

Similar freedom of action, as a practical matter, frequently remains with the member in shifting from one handler to another notwithstanding the fact that marketing contracts with members usually vest full and exclusive authority to market the member's milk in the association. Only in special cases are producers likely to be shifted from one plant to another or from one handler to another by the association against the wishes of the producer. Also shifts to protect the member are relatively few in comparison to the total number of members. Hence, the action of a bargaining association in marketing milk to more than one handler is almost wholly the result of its policy in selecting members rather than a matter of its corporate capacity or its ability to shift large numbers of producers, or groups of producers, from one handler to another. This important characteristic must be borne in mind, particularly in contrasting a bargaining with an operating type of association.

The chaotic condition which was dramatized by the closing of the plants in Northern New York was market-wide in scope and was beyond the capacity of any single organization to correct. It later proved to be beyond the capacity of a market-wide organization representing the majority of all cooperatives in that area and remained so until both Federal and State authorities acted in response to, and in cooperation with, organized producers in that area to bring the entire market under a public regulatory system. That the association here considered was unable to maintain prices to these producers, or to preserve for them an equitable share of the New



York fluid market under these circumstances, is not the condition or the evidence of an infirmity that would have prevented it from being qualified.

Many of the price problems in which members of this association are concerned are common to all producers in the New York milk market and particularly among those producers delivering to plants of proprietary handlers. Mobilization of producer resources to deal effectively with many of these problems requires action on a broader scale than is encompassed within the relations between a single association and its purchaser or purchasers. A realistic appraisal, therefore, of the performance of a single association must include a consideration of its relations with other organized producer groups.

With the introduction of the Federal and State orders in the New York market, these producers in Northern New York again obtained an equitable share in the fluid milk sales from all milk approved for sale as fluid milk in the New York metropolitan sales area. In view of the very considerable portion of the evidence in the record of the hearings before the Federal Trade Commission relating to the incidents in 1937, it is not to be overlooked that the Eastern Milk Producers Cooperative Association, Inc., (then known as the Sheffield Milk Producers Cooperative, Inc.) through two of its directors, participated in the organization of the Metropolitan Milk Producers Bargaining Agency; was one of the two largest members of that organization; provided part of its officer personnel during the entire period of its membership; and supported the movement for a Federal order which achieved, among other things, the above-mentioned results for producers in Northern New York.

Company pressure to prevent the introduction of these regulations in the New York market, as shown by the evidence in the Federal Trade Commission hearings, obviously did not achieve the desired end in determining the action of the Eastern Milk Producers Cooperative Association, Inc., as a whole. This is true notwithstanding a certain degree of success which might have been achieved in local elections. This action by the Eastern Milk Producers Cooperative Association, Inc., as well as that in regard to the Pennsylvania plants in 1935 occurred before the corporate limitations here discussed were withdrawn and served to show a growing activity by responsible officials of this association in supporting recognized producer interests individually and in collaboration with other producer associations.

Membership in the Metropolitan Milk Producers Bargaining Agency is at least indicative of the appraisal of the Eastern Milk Producers Cooperative Association, Inc., by the other principal producer associations in the market and of their representatives who could not have been ignorant of the general character of the organization and the manner in which its principal representatives operated. While not binding upon the Government, such action by responsible producer leaders is at least entitled to consideration. This development took place before occasion for appraisal under Order No. 27 arose. There is no evidence before us now that the withdrawal of the Eastern Milk Producers Cooperative Association, Inc., from



the Agency in February 1942 involved any official action by the Agency with respect to its failure to conform to this standard of membership or that the Eastern Milk Producers Cooperative Association, Inc., was influenced by any action of the Sheffield Farms Company.

Available information indicates that the corporate limitation under which it could not sell to any purchaser, other than the Sheffield Farms Company, was removed by a succession of steps involving amendment to its charter, by-laws, and the modification of certain sales contracts which was completed by 1939. The evidence also shows that after that date, and continuing to the present time, the solicitation of members is confined almost entirely to producers delivering to plants operated by Sheffield Farms Company or certain of its subsidiaries. It also shows that almost invariably the Eastern Milk Producers Cooperative Association, Inc., has given notice under the 30-day cancellation clause of its membership to a producer whenever patronage of the company or its subsidiaries ceased to operate the plant to which he delivered his milk or for some other individual reason. In cases where the Eastern Milk Producers Cooperative Association, Inc., has failed to follow up individual withdrawals from such operated plants by official notice of termination, its check-off from such producers has generally ceased and the association has not assumed active responsibility for the continued representation of such producers.

An association which is guided by such a policy with respect to the scope of its membership appears to have preserved many of the infirmities indicated above. Undoubtedly such an association is more vulnerable to company pressures than an organization which represents producers who are supplying a greater number of handlers within the same market or in several markets. It is almost inevitable that officials of such an association will tend to appraise marketing problems with particular reference to the operations of their sole or principal purchaser. Their interests as producers on the market are likely to be viewed in much the same manner. This, in turn, tends to hinder as full and as free collaboration with other producers and producer associations as may be desirable. Hence, it may provide a convenient point for outside interests to develop dissension among producers. Also, in an organization of the size of the Eastern Milk Producers Cooperative Association, Inc., with its potentialities, because of size alone, any failure to provide and support strong producer leadership can easily give rise to speculation as to the possibility of outside sources of control.

In regard to the restriction of membership to producers delivering to a single handler or a subsidiary thereof, as a matter of policy rather than as a result of corporate limitations, no important distinction is apparent between the Eastern Milk Producers Cooperative Association, Inc., and those bargaining associations organized throughout the market under the guidance of the Metropolitan Milk Producers Bargaining Agency. Payments at the rate of  $\frac{3}{4}$  cents per hundredweight (originally 1 cent per hundredweight) were author-



ized to reimburse the bargaining type of association for general services rendered to all producers.

In view of the prevalence of the practice in the New York area of organizing separate cooperative associations among the producers delivering to a single handler, it is reasonable to assume that the proponents of the order did not consider that practice as being incompatible with the standard of having control of all association activities in the hands of members. Should experience indicate that conformity with such a standard is prevented by such a policy, any corrective measures obviously would have to be applied uniformly to all associations of a similar character.

The same general observation is to be made with respect to the failure of the Eastern Milk Producers Cooperative Association, Inc., to audit handler utilization of milk check weights and tests of milk delivered by members, and certain other associated services rendered by similar types of associations in other markets.

Much information was assembled in the hearings before the Federal Trade Commission relative to prices received by members of the Eastern Milk Producers Cooperative Association, Inc., in comparison to the prices paid by handlers purchasing from associations against whom allegations of handler domination have not been made. Similar comparisons have been made with prices paid to member producers by two associations which own and operate the plants at which milk of their members is received, weighed, tested, cooled, and prepared for shipment. The import of such evidence was to show that so-called bargaining efforts of the Eastern Milk Producers Cooperative Association, Inc., were not productive of prices that might have been reasonably expected had the association been free from the domination of the Sheffield Farms Company. The question before the War Food Administrator is obviously different from the question before the Federal Trade Commission and the information relative to such prices is to be appraised in the light of the order program and the criteria of cooperative organization and performance set forth in Order No. 27.

In the matter of prices at which milk is marketed by a strictly bargaining as contrasted with an operating association and also with respect to prices received by members of either type of association, fundamental differences between their methods of marketing must be taken into account. Unless a bargaining association has adopted some method of blending of proceeds among its members or makes payment to them adjusted by customary price differentials, the total amount as well as the unit price received by members is usually identical with the price at which it is marketed to handlers, except for deductions authorized by the members for association expenses. Such prices usually apply to raw milk f.o.b. a receiving plant.

On the other hand, the price or prices at which milk is sold by an operating association usually reflects a plant handling allowance, and if further processing is involved before sale, other factors are reflected in the ultimate sale price. Obviously, the selling prices of the two types of associations would not be comparable unless all elements of



value are identified and evaluated so that comparison could be made between factors common to both. Also, the prices which an operating association may pay its members do not necessarily reflect the full value received by such members because of the joint ownership of corporate assets and joint sharing of net gains or losses. These factors, in turn, are dependent upon the fiscal policy and operations of the association.

Members of some associations in the New York area have, at times, received a higher price than was received by members of the Eastern Milk Producers Cooperative Association, Inc., after taking into consideration customary differentials, while members of others have appeared to receive less. These differences, however, are not regarded as conclusive of any of the issues before the War Food Administrator.

In view of the scope of Order No. 27 as above described, there was obviously some latitude for direct negotiation with the purchasing company with respect to unpriced milk until March 1, 1941, and with respect to premiums for special grade milk since July 1, 1941. Also, during the period when the order was suspended in 1939, the price for all milk was subject to negotiation.

While the prices fixed by Order No. 27 are minimum prices only, bargaining associations in the New York market and in other areas where similar regulations are in effect have generally directed their principal efforts to effect revisions in such prices by amendment to orders through the procedural channels provided by law rather than by direct negotiation with purchasers. The Eastern Milk Producers Cooperative Association, Inc., has always taken an active part, independently and in collaboration with other producer associations, in this process.

There is no evidence that the Sheffield Farms Company has, since September 1, 1938, failed to pay the minimum prices fixed by Order No. 27 for milk received from members of the Eastern Milk Producers Cooperative Association, Inc. Acceptance of such prices by the association, together with its general activity in working for their adjustment as described, is not regarded as an exhibition of lack of control by producers, notwithstanding the fact that producers who were members of certain operating cooperatives obtained a higher net return for their milk by making the investment and undertaking the risks involved in plant operation. As suggested above, the comparability of such prices is not regarded as being germane to the question of qualification of a bargaining association for cooperative payments. In fact, lack of comparability in the performance of different types of cooperative associations and variation between them in the degree of general benefit resulting from their operations is explicitly recognized in the order in the differing rates of payment provided for different types of cooperative associations.

Direct price negotiations between the Eastern Milk Producers Cooperative Association, Inc., and the Sheffield Farms Company, with respect to milk not priced or qualities not reflected in the order price system, are of possible significance. Testimony of several witnesses at the hearings held in Cobleskill, New York, by the Federal Trade



Commission indicated that producers were disappointed with the results achieved and felt that full value was not being received for that milk. If the price or premium obtained was to be considered as an evidence of lack of producer control in this type or in this particular association, some judgment as to the results that would have been achieved in the presence of satisfactory producer control would have to be made. We are without a sound basis for such a determination. Obviously, some other basis of appraisal should be found.

Inability to accomplish desired ends within the limited sphere of negotiations with a single handler, however large, is not to be confused with a lack of control of an organization as such by its producer members. Nor is the dominating exercise of economic power by a handler in the field of price negotiation with an association of producers of unequal bargaining strength to be regarded as an infirmity which would bar such an association from payments under Order No. 27.

From the standpoint of its member relations, the scope of a service program to members, and the range of business functions incident to the marketing of milk, which similar associations in other large fluid milk markets have developed much may remain to be done or undone in the Eastern Milk Producers Cooperative Association, Inc., if its full potentialities as an association are to be realized. In relation to the character of bargaining associations in the area in which it operates, however, and in view of the abundance of information already available and the foregoing considerations as applied to its status as of and subsequent to, December 5, 1941, it is believed that the suspended payments should be restored to the Eastern Milk Producers Cooperative Association, Inc., as has been done in several other instances by similar action, and that no useful purpose would be served by holding a hearing.

The determination, of course, is not to be construed in any way as affecting any finding the Federal Trade Commission may make, for the purposes of the Federal Trade Commission Act, that the allegations of its complaint in its pending case against Sheffield Farms Company, Inc., have or have not been sustained.

May 16, 1944.

